

**United States Department of Labor
Employees' Compensation Appeals Board**

H.C., Appellant

and

**DEPARTMENT OF THE TREASURY,
BUREAU OF ENGRAVING & PRINTING,
Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-0344
Issued: April 19, 2021**

Appearances:

*Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2019 appellant filed a timely appeal from a November 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the November 4, 2019 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing October 23, 2015 causally related to his accepted September 29, 1998 employment injury.

FACTUAL HISTORY

On October 14, 1998 appellant, then a 24-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on September 29, 1998 he sustained injury when he participated in a take-down maneuver during a training session while in the performance of duty.⁴ OWCP accepted his claim for displacement of cervical intervertebral disc without myelopathy and paid appellant appropriate compensation for periods of disability. Appellant periodically stopped work and returned to work in limited-duty jobs for the employing establishment.

In a January 4, 2007 report, Dr. Steven Scherping, a Board-certified orthopedic surgeon, indicated that appellant reported that, in November 2006, he began to develop recurrent severe pain in his posterior neck and posterior shoulder girdles while working for the employing establishment. He noted that appellant indicated that there was no obvious history of trauma or precipitating event for this pain. Dr. Scherping diagnosed rule out cervical disc herniation/cervical spinal stenosis. In a February 26, 2007 report, he again discussed appellant's reported symptoms beginning in November 2006. Dr. Scherping opined that appellant's September 29, 1998 injury was within a reasonable degree of medical certainty responsible for his cervical disc herniation and associated symptoms "both at that time as well as currently."

In an April 21, 2009 report, Dr. Angele C. Seiler, a Board-certified internist, evaluated appellant for neck pain due to a recent nonwork-related motor vehicle accident, which occurred when he was stopped in his vehicle and rear-ended by another car. She noted that appellant had a history of cervical disc degeneration that periodically caused pain and was not bothering him before the motor vehicle accident occurred.

Appellant stopped work on October 23, 2015. On October 24, 2018 he filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability on October 23, 2015 due to his September 29, 1998 employment injury. Appellant asserted that his "first recurrence" occurred on September 3, 2006 when he went to the emergency room due to cervical pain from C6 and C7 cervical disc herniations related to his 1998 injury. He alleged that "the most recent recurrence" occurred on October 23, 2015 when his condition degenerated to the point he could no longer hold his head up.

Appellant submitted an October 10, 2018 report from Dr. Imran Siddiqui, a Board-certified physical medicine and rehabilitation physician, who discussed his treatment of appellant's cervical condition since February 2018. Dr. Siddiqui noted that Dr. Scherping had indicated that appellant's reported cervical problems in February 2007 were the direct result of a progression of symptoms related to his initial injury in 1998. He reported that appellant continued to have occasional symptomatic flare-ups, but his condition was reasonably managed until 2015 when he was lifting heavy boxes at work and felt a strong "pop" in his neck followed by severe debilitating pain. Dr. Siddiqui indicated that, given the medical history and objective diagnostic findings, it

⁴ OWCP assigned the claim File No. xxxxxx566.

was within a reasonable degree of medical certainty that the 1998 trauma led to post-traumatic arthritic changes in appellant's cervical spine, which ultimately led to the deterioration that he experienced as symptomatic flare-ups in both 2006 and 2015.

In a development letter dated February 6, 2019, OWCP requested that appellant submit additional evidence in support of his recurrence of disability claim. In particular, it requested that he submit records of any medical treatment received between late-1998 and early-2007. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant submitted additional medical reports, most of which were produced in 2015 and 2016.⁵ In a November 11, 2015 report, Dr. Victor Ibrahim, a Board-certified orthopedic surgeon, indicated that appellant continued to have chronic diffuse neck pain and feelings of constant spasm and tightness. On November 17, 2015 he advised that appellant had been under his care since August 2015 at which time he presented with severe progressive neck pain that was initiated by an employment-related incident and exacerbated "with prolonged work, standing or sitting." In a December 11, 2015 report, Dr. Ibrahim noted that appellant continued to have axial neck pain. He indicated that appellant continued on his current opioid regimen and that he had been having trouble managing his pain. In a February 1, 2016 attending physician's report (Form CA-20), Dr. Ibrahim listed a date of injury of October 23, 2015 and a history of injury of "moving heavy boxes in his office." He diagnosed myofascial cervical pain, checked a box marked "Yes" indicating that the diagnosed condition was related to the reported work activity,⁶ and found disability commencing October 26, 2015.

In a January 6, 2016 report, Dr. Austin Churchill, a Board-certified physical medicine and rehabilitation physician, indicated that appellant's current neck pain, dysfunction, and magnetic resonance imaging (MRI) findings were a direct result of the initial injury in 1998. He noted that appellant had post-traumatic cervical spine degenerative changes and indicated that the natural history of his disorder was that of slow progression over many years with periods of aggravation and acquiescence. Dr. Churchill indicated, "The initial injury during that training session in 1998 has [led] to early onset progressive degenerative cervical spine disease that has now reached a point that it interferes significantly with day[-]to[-]day function."

By decision dated May 23, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability commencing October 23, 2015 causally related to his accepted September 29, 1998 employment injury.

On August 22, 2019 appellant requested reconsideration of the May 23, 2019 decision. He submitted a June 28, 2019 report from Dr. Siddiqui who indicated that the main diagnosis of the initial injury in 1998 was disc herniation at C6-7 with encroachment on the spinal cord. Dr. Siddiqui noted that in 2007 appellant had an aggravation of the initial injury. He indicated that it was important to note that there was no specific trauma in 2007. Dr. Siddiqui noted that the "incident in 2015" also was an aggravation of the prior injury from 1998. He advised that the

⁵ Appellant submitted a copy of a traumatic injury claim (Form CA-1) he filed on December 7, 2015 in which he alleged that he sustained an injury on October 23, 2015 when he lifted a box and felt a sudden shooting pain in his neck and spasm in his neck/shoulder while in the performance of duty. His claim for an October 23, 2015 traumatic injury was denied by OWCP in February 29 and September 7, 2016 decisions under File No. xxxxxx509 and is not the subject of the present appeal.

⁶ Dr. Ibrahim added the notation, "Injury caused neck strain/pain."

motor vehicle accident in 2009 also may have caused some aggravation, but did not cause a break in the causal link with the original injury in 1998. Dr. Siddiqui opined that the fact that the degeneration was focused on the C6-7 area, the area of initial injury, showed that the degeneration was post traumatic in nature and was neither age related nor caused by general repetitive stress.

By decision dated November 4, 2019, OWCP denied modification the May 23, 2019 decision.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁷ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁸

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.¹¹ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.¹²

⁷ 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁸ *Id.*

⁹ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

¹⁰ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹¹ *See D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹² *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman, id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing October 23, 2015 causally related to his accepted September 29, 1998 employment injury.

In support of his claim, appellant submitted an October 10, 2018 report from Dr. Siddiqui who noted that Dr. Scherping had indicated that appellant's reported cervical problems in February 2007 were the direct result of a progression of symptoms related to his initial injury in 1998. Dr. Siddiqui advised that appellant continued to have occasional symptomatic flare-ups, but his condition was reasonably managed until 2015 when he was lifting heavy boxes at work and felt a strong "pop" in his neck followed by severe debilitating pain. He indicated that, given the medical history and objective diagnostic findings, it is within a reasonable degree of medical certainty that the 1998 trauma led to post-traumatic arthritic changes in appellant's cervical spine, which ultimately led to the deterioration that he experienced as symptomatic flare-ups in both 2006 and 2015.

In a June 28, 2019 report, Dr. Siddiqui advised that the main diagnosis of the initial injury in 1998 was disc herniation at C6-7 with encroachment on the spinal cord. He noted that, in 2007, appellant had an aggravation of the initial injury. Dr. Siddiqui indicated that it was important to note that there was no specific trauma in 2007. He opined that the "incident in 2015" also was an aggravation of the prior injury from 1998. Dr. Siddiqui advised that the motor vehicle accident in 2009 also may have caused some aggravation, but did not cause a break in the causal link with the original injury in 1998. He opined that the fact that the degeneration was focused on the C6-7 area, the area of initial injury, showed that the degeneration was post-traumatic in nature and was neither age related nor was caused by general repetitive stress.

The Board finds, however, that these reports are of limited probative value because Dr. Siddiqui did not provide adequate medical rationale in support of his opinion on causal relationship. Dr. Siddiqui did not describe the accepted September 29, 1998 employment injury in any detail or explain how it would have been competent to cause a recurrence of disability on or after October 23, 2015. The case record lacks bridging evidence for a number of years, particularly between late-1998 and early-2007,¹³ and Dr. Siddiqui failed to explain why appellant's work stoppage on October 23, 2015 was due to a spontaneous recurrence of the September 29, 1998 employment injury, rather than due to a nonwork-related cause or due to the sustaining of a new work injury on October 23, 2015 or some other date.¹⁴ Dr. Siddiqui opined that the September 29, 1998 employment injury caused post-traumatic arthritic changes in appellant's cervical spine, but OWCP has not accepted an employment-related arthritic condition and Dr. Siddiqui has not provided a rationalized medical opinion establishing such a condition. The Board has held that a report is of limited probative value regarding causal relationship if it does

¹³ See *L.A.*, Docket No. 18-1570 (issued May 23, 2019) (regarding the importance of bridging evidence in establishing causal relationship).

¹⁴ Appellant's claim for an October 23, 2015 traumatic injury was denied by OWCP on February 29 and September 7, 2016 decisions under File No. xxxxxx509 and is not the subject of the present appeal.

not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹⁵ Therefore, these reports are insufficient to establish appellant's claim.

Appellant also submitted reports from 2015 and 2016 of Dr. Ibrahim and Dr. Churchill, which discussed appellant's medical condition around the time of the claimed recurrence of disability, but these reports are of no probative value on the underlying issue of this claim because they do not contain an opinion that appellant sustained a recurrence of disability on or after October 23, 2015 causally related to his accepted September 29, 1998 employment injury. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.¹⁶ Therefore, these reports are insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence establishing a recurrence of disability on or after October 23, 2015 causally related to his accepted September 29, 1998 employment injury, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing October 23, 2015 causally related to his accepted September 29, 1998 employment injury.

¹⁵ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ *T.H.*, Docket No. 18-0704 (issued September 6, 2018); see also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board